

U.S. Application No. 10/646,318, filed August 22, 2003
Attorney Docket No. 14366US02
Response dated January 5, 2010 to provoke Advisory Action
In Response to Office Action Made Final mailed November 5, 2009

REMARKS

Claims 56-72 are pending. Claims 56-72 are rejected.

Claim 56 is rejected under 35 U.S.C. 103(a) as being obvious over Sandstedt in view of Allais and further in view of Kang. Applicants respectfully traverse the rejection for at least the following reasons.

To maintain an obviousness rejection, each and every element must be taught by the combination of Sandstedt, Allais and King as asserted in the Final Rejection.

Claim 56 recites “the transceiver being operatively coupled to a **rechargeable battery**.” Neither Sandstedt, Allais or King teaches a rechargeable battery. In fact, a word search fails for the word “battery.” Since neither Sandstedt, Allais or King even mentions a battery or, in particular, a rechargeable battery, the combination of Sandstedt, Allais and King, as asserted, does not teach each and every element as set forth in claim 56.

Since the combination of Sandstedt, Allais and Kang, as asserted in the Final Rejection, does not teach each and every element as set forth in claim 54, the alleged *prima facie* case of obviousness cannot be maintained. See, e.g., M.P.E.P. 2142 (“The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, **the applicant is under no obligation to submit evidence of nonobviousness.**”)

It is therefore respectfully requested that the rejection under 35 U.S.C. 103(a) be withdrawn with respect to claim 56.

Claim 56 recites “a terminal that has a **microphone and a speaker that provide voice input/output**.” As alleged, Sandstedt does not teach that the microphone and the speaker of the terminal provide voice input/output. The Office Action Made Final mailed November 5, 2009 (“the Final Rejection”) cites FIG. 1A of Sandstedt.

The attention of the Examiner is respectfully directed to FIG. 1 which shows communication links 66 and 69. Communication link 99 is between the hand held portable order terminal 12 and the paging apparatus 14. Communication link 66 is between the hand held portable order terminal 12 and the input station 16. FIG. 1A illustrates the energy media used for communication link 66. As is evident from FIG. 1A, the energy media is either optical waves as illustrated between the light emitting diode (LED) and the photocell (PC); RF waves as between antennas 23, 25; inductive waves as between inductive coils 43, 45; or sound waves as indicated by microphone/speaker. There is no teaching in FIG. 1A of voice input or voice output. Instead, the microphone/speaker are used by machines to communicate using sound waves.

This is reinforced by Sandstedt at col. 3, lines 36-41 which states that “[c]oupling between the hand held portable terminal 12 and the paging apparatus [14] ... as well as the input stations ... is provided by a selected type energy means including but not limit to apparatus which is noted above employs optical, RF, audio, and inductive energy.”

Furthermore, Sandstedt at col. 4, lines 48-59 states that “[o]nce the operator has successfully entered customer orders and a billing arrangement therefore, ..., this information is coupled to an input/output communication link 66 employing either optical, RF, audio or inductive energy through a sub-assembly 68 located on the back casing 52 having the appropriate energy source and receptors, ..., which are adapted to receive and transmit energy to like energy source and receptors located in one of the input stations”

In other words, FIG. 1A merely shows different energy media over which the terminal 12 communicates with the input station 16 or over which the terminal 12 communicates with the paging apparatus 14. The machines can communicate with each other over light waves, RF waves, sound waves or inductive waves.

In carefully viewing, for example, FIG. 4, there is no evidence in Sandstedt of a device in terminal 12 that converts voice into, for example, electromagnetic waves or a device in terminal 12 that converts, for example, electromagnetic waves into voice.

Furthermore, Applicants respectfully request that, before finding another reference to make up for the teaching deficiencies of Sandstedt, the Examiner consider why would the portable terminal 12 used by the waiter would need to use voice input/output in communicating with digital computer 22 via input station 16 and polling station 18. **In other words, in Sandstedt, portable terminal 12 is communicating with digital computer 22 to store the restaurant customer's order, why would two machines (i.e., terminal 12 and digital computer 22) passing data with respect to the order need to communicate using voice?**

For at least the above reasons, it is respectfully submitted that FIG. 1A, as asserted in the Final Rejection, does not teach “a terminal that has a microphone and a speaker that provide voice input/output.”

It is also submitted that the combination of Allais and Kang, as asserted in the Final Rejection, does not make up for the teaching deficiencies of Sandstedt.

Since the combination of Sandstedt, Allais and Kang, as asserted in the Final Rejection, does not teach each and every element as set forth in claim 56, the alleged *prima facie* case of obviousness cannot be maintained.

It is therefore respectfully requested that the rejection under 35 U.S.C. 103(a) be withdrawn with respect to claim 56.

Claim 56 recites “wherein the **transmitter circuitry** comprises a transmitter, a transmitter level adjust circuitry, a low pass filter and a **modulation-generator-and-limiter circuitry**, wherein the modulation-generator-and-limiter circuitry is coupled to the low pass filter which, in turn, is coupled to the transmitter level adjust circuitry which, in turn, is coupled to the transmitter.”

In the Final Rejection, the modulation-generator-and-limiter circuitry is identified in FIG. 3 of Kang as the WBD Modem 222. However, it is respectfully submitted that the WBD Modem 222 in Kang is part of the receiver circuitry and not the transmitter circuitry.

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The attention of the Examiner is respectfully drawn to FIG. 1 of Kang which shows WBD Modem 6 coupled to radio receiving demodulator 7. Note also, in FIG. 2 of Kang, that WBD Modem 222 is connected to radio receiver 202. In addition, please note Kang at col. 3, lines 39-41 which states that “[c]onnected with the radio receiver 202 is the WBD modem 222 to decode and convert into digital data the WBD of 10 kbps received by the radio receiver 202.”

Thus, although asserted in the Final Rejection to be part of the transmitter circuitry of claim 56, Kang teaches that WBD modem 22 is part of the receiver circuitry.

It is also submitted that the combination of Sandstedt and Allais, as asserted in the Final Rejection, does not make up for the teaching deficiencies of Kang.

Accordingly, a *prima facie* case of obviousness has not been presented in the Final Rejection. See, e.g., M.P.E.P. 2142 (“The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.”)

Since the combination of Sandstedt, Allais and Kang, as asserted in the Final Rejection, does not teach each and every element as set forth in claim 56, the alleged *prima facie* case of obviousness cannot be maintained.

It is therefore respectfully requested that the rejection under 35 U.S.C. 103(a) be withdrawn with respect to claim 56.

Claim 56 recites “wherein the wireless transceiver is housed in a module that can be removed and replaced with a different type of module without requiring tuning adjustments.”

The Examiner asserts that, without documentary evidence, that it would have been obviousness to that the wireless transceiver be housed in a module that can be removed and replaced with a different type of module without requiring tuning adjustments.

Applicants respectfully disagree and challenge the assertions made without documentary evidence as set forth in the Final Rejection.

The Examiner asserts in the Final Rejection that the “module that can be removed and replaced with a different type of module without requiring tuning adjustments” is the entire housing 12/52 of the hand held portable order entry terminal 12 in Sandstedt. However, this is inconsistent with the specification of the present application. Although the Examiner may interpret claims broadly, such interpretations should not be inconsistent with the specification. According to M.P.E.P. 2111, “The Patent and Trademark Office (‘PTO’) determines the scope of claims . . . upon giving claims their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art,” quoting *In re Am Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364; 70 U.S.P.Q. 2d 1827 (Fed. Cir. 2004). See also *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 U.S.P.Q. 2d 1321 (Fed. Cir. 2005).

Since the Examiner’s interpretation of the entire housing 12/52 of the hand held portable order entry terminal 12 in Sandstedt being the “module that can be removed and replaced with a different type of module without requiring tuning adjustments,” is inconsistent with the specification, none of Sandstedt, Allais and Kang teaches the module as set forth in claim 56.

If none of Sandstedt, Allais and Kang teaches the module, then it is not obvious or well known that “the wireless transceiver is housed in a module that can be removed and replaced with a different type of module without requiring tuning adjustments.”

Furthermore, the recites elements “the wireless transceiver is housed in a module that can be removed and replaced with a different type of module without requiring tuning adjustments” relate to an area of **esoteric technology**. M.P.E.P. 2144.03(A) states that “assertions of technical facts in the areas of esoteric technology ... **must always be supported by citation to some reference work recognized as standard in the pertinent art.**”

Therefore, Applicants respectfully request that the Examiner provide a citation to a reference work that is recognized as a standard in the art.

In addition and/or in the alternative, Applicants respectfully request that the Examiner produce references in support of the Examiner’s contention or, if the Examiner is relying upon

personal knowledge to support the finding of what is known in the art, then the Examiner must provide an affidavit or declaration setting forth specific factual statements and explanations to support the finding. See, e.g., M.P.E.P. § 2144.03 and 37 C.F.R. § 1.104(d)(2).

For at least the above reasons, it is respectfully submitted that the obviousness rejection cannot be maintained. It is respectfully requested that the rejection under 35 U.S.C. 103(a) be withdrawn with respect to claim 56.

Claims 57-72 are also rejected based on **at least** the combination of Sandstedt, Allais and Kang. It is respectfully submitted that the same or similar arguments or an applicable subset of the same or similar arguments, if appropriate, that were made with respect to claim 56 be made with respect to claims 57-72.

In addition, where documentary evidence has been omitted in presenting a *prima facie* case of obviousness, Applicants respectfully request that the Examiner produce references in support of the Examiner's contention or, if the Examiner is relying upon personal knowledge to support the finding of what is known in the art, then the Examiner must provide an affidavit or declaration setting forth specific factual statements and explanations to support the finding. See, e.g., M.P.E.P. § 2144.03 and 37 C.F.R. § 1.104(d)(2).

Applicants do not necessarily agree or disagree with the Examiner's characterization of the documents made of record, either alone or in combination, or the Examiner's characterization of recited claim elements. Furthermore, Applicants respectfully reserve the right to argue the characterization of the documents of record, either alone or in combination, to argue what is allegedly well known, allegedly obvious or allegedly disclosed, or the characterization of the recited claim elements should that need arise in the future.

Applicant respectfully reserves the right to pursue, without prejudice, subject matter that has been cancelled, amended and/or withdrawn in a related and/or continuing application.

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With respect to the present application, Applicants hereby rescind any disclaimer of claim scope made in the parent application or any predecessor or related application. The Examiner is advised that any previous disclaimer of claim scope, if any, and the alleged prior art that it was made to allegedly avoid, may need to be revisited. Nor should a disclaimer of claim scope, if any, in the present application be read back into any predecessor or related application.

In view of at least the foregoing, it is respectfully submitted that the present application is in condition for allowance. Should anything remain in order to place the present application in condition for allowance, the Examiner is kindly invited to contact the undersigned at the below-listed telephone number.

The Commissioner is hereby authorized to charge any additional fees, to charge any fee deficiencies or to credit any overpayments to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

Date: January 5, 2010

Respectfully submitted,

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